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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN FRANCISCO DIVISION**
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10 **TERRENCE DAVIS,**

11 **Plaintiff,**

12 **v.**

13 **MICHAEL J. ASTRUE, Commissioner**
14 **of the Social Security Administration,**

15 **Defendant.**

16 **JOHN DOE,**

17 **Plaintiff,**

18 **v.**

19 **MICHAEL J. ASTRUE, Commissioner**
20 **of the Social Security Administration,**

21 **Defendant.**

Case No. 06-cv-06108 EMC (NC)

**ORDER RE: DISCOVERY
DISPUTE**

Re: Dkt. Nos. 299, 309

Related Case: No. 09-cv-00980 EMC
(NC)

22 At issue is defendant SSA's privilege log addressing 271 entries disputed by
23 Plaintiffs. SSA withholds these documents based on the deliberative process privilege,
24 the attorney-client privilege, or the attorney work product doctrine. Brief ISO Priv. Log,
25 Dkt. No. 299, Exh. 1. Plaintiffs dispute application of the asserted privileges and request
26 production of all documents identified in SSA's privilege log. Opp'n, Dkt. No. 309.
27 Alternatively, plaintiffs assert that their need for the documents overcomes the qualified
28 deliberative process privilege. *Id.*

1 In consideration of the representations made by the parties in their briefs and at
2 hearing, the Court finds as follows:

3 (1) SSA has met its burden as to the deliberative process privilege by
4 demonstrating that documents identified in its March 12, 2012 revised privilege log are
5 pre-decisional and deliberative.

6 (2) Plaintiffs have not overcome this qualified privilege and are, therefore, not
7 entitled to these documents. *See FTC v. Warner Commc'ns, Inc.*, 742 F.2d 1156, 1161
8 (9th Cir. 1984).

9 (3) SSA has also met its burden as to documents withheld under the attorney-
10 client privilege and work product doctrines with two exceptions. First, plaintiffs asserted
11 during hearing that they no longer seek documents related to privilege log entries Nos. 32,
12 36, 65, 103, and 241. Second, the Court finds disputed log entry No. 4 (e-mail from SSA
13 to third party Marty Ford) falls outside the scope of the deliberative process privilege and
14 is not protected attorney work product. As to this document only, SSA is to make any
15 additional privilege assertions no later than Friday, March 16, 2012. The Court will
16 consider any further disputes about log entry No. 4 on shortened time.

17 IT IS SO ORDERED.

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19 DATED: March 15, 2012

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21 NATHANAEL M. COUSINS
22 United States Magistrate Judge
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